



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kanech Development Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's Application made April 19, 2017, amended April 20, 2017: MNSD; MNDC; FF
Landlords' Application made May 15, 2017: MND; MNR; MNSD; MNDC; FF

Introduction

This Hearing was scheduled to be conducted by teleconference on June 13, 2017, at 11:00 a.m., with respect to cross-applications. The Tenant applied for return of the security deposit; compensation for damage or loss; and to recover the cost of the filing fee from the Landlords. She amended her Application on April 20, 2017, to include a request to recover the cost of serving the Landlords with the Notice of Hearing documents.

The Landlords seek a monetary award for unpaid utilities, the cost of cleaning the rental unit, and the cost of photocopies; to apply the security deposit towards their monetary award; and to recover the cost of the filing fee from the Tenant.

Both parties signed into the teleconference and provided affirmed testimony.

It was determined that each party served the other with their Notice of Hearing documents and documentary evidence, by registered mail.

Issue(s) to be Decided

- Is the Tenant entitled to return of the security deposit and the compensation sought?
- Are the Landlords entitled to a monetary award?

Background and Evidence

This tenancy began on May 1, 2016, and ended on January 31, 2017. Monthly rent was \$1,500.00. The Tenant was responsible for 50% of the utilities. The Tenant paid a security deposit in the amount of \$750.00 at the beginning of the tenancy.

The Tenant gave the following testimony:

The Tenant acknowledged that she owed the Landlord \$417.00 at the end of the tenancy for her share of the utilities and that she had agreed that he could deduct that amount from her security deposit.

The Tenant testified that she provided the Landlord with her forwarding address in writing on February 1, 2017, by leaving it in the Landlord's mail box and by texting the address to the Landlord. She stated that the Landlord replied to her text, advising that he would mail her the balance of the security deposit after deducting the outstanding utilities. The Tenant testified that she had not received the refund by February 19, 2017, so she sent him another text, to which he did not reply.

The Tenant testified that she sent another text to the Landlord on February 23, 2017. To which the Landlord replied that he had mailed her the refund on February 6, 2017. She testified that she sent two more texts to the Landlord: on March 5 and 14, 2017. The Tenant testified that the Landlord replied to her March 14 text, advising that he had mailed her the refund on February 6, 2017, and that if she didn't get it by the end of the week, he would send her another one. The Tenant stated that she advised the Landlord that she would start dispute resolution proceedings if she did not receive the cheque by March 17, 2017.

The Tenant stated that she still had not received the refund by March 28, 2017, so she texted the Landlord again. The Landlord replied that he would send a new cheque, but had to place a "stop payment" on the original one. The Tenant stated that she had not received the refund by April 19, 2017, so she made her Application for Dispute Resolution.

The Tenant provided copies of text messages between the parties.

The Tenant seeks a monetary award, calculated as follows:

Return of the security deposit	\$750.00
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Compensation under Section 38 of the Act	\$750.00
Recovery of the filing fee	\$100.00
Recovery of the cost of serving the Landlord	\$11.25
Less outstanding utilities	<\$417.00>
TOTAL	\$1,194.25

The Landlord MB and his agent PB gave the following testimony:

The Landlord testified that wrote a cheque in the amount of \$333.00 on February 3, 2017, representing return of the security deposit less the amount the Tenant owed for utilities. He mailed the cheque to the Tenant's forwarding address on February 6, 2017. The Landlord stated that he "stopped the payment of the cheque on April 24, 2017". The Landlord submitted that he had three different address for the Tenant and so he asked her to verify the address to mail a replacement cheque, but the Tenant did not respond.

The Landlord provided copies of a cheque stub ledger from January 7 to March 20, 2017, (#001505 to #001540) which includes a stub for a cheque to the Tenant dated February 3, 2017 (#001525) in the amount of \$333.00. He also provided a copy of a "stop payment" advice.

The Landlord's agent testified that the Tenant did not clean the rental unit or shampoo the carpet at the end of the tenancy. He stated that he inspected the rental unit on February 1, 2017, with the new occupant and that she had left garbage on the floor and items in the cupboards. The Landlord's agent testified that the Landlord paid to have the carpets cleaned, the garbage removed, and the floors cleaned. He stated that the new occupant paid a portion of the cost of cleaning the rental unit.

The Landlord provided photocopies of photographs, invoices, and text messages between the parties.

The Landlord seeks a monetary award, calculated as follows:

Unpaid utilities	\$417.00
Cost of carpet cleaning	\$94.50
Cost of cleaning the rental unit	\$240.00
Recovery of the filing fee	\$100.00
Recovery of the cost of photocopies for evidence	<u>\$47.80</u>

TOTAL

\$899.80

The Tenant gave the following reply:

The Tenant testified that the Landlord did not perform condition inspections at the beginning or the end of the tenancy. She stated that she had to clean the rental unit at the beginning of the tenancy because it was so dirty. The Tenant acknowledged that the Landlord compensated her for cleaning the rental unit at the beginning of the tenancy.

The Tenant stated that she gave the keys to the new occupant on January 31, 2017. She testified that she cleaned the rental unit at the end of the tenancy and that some of the damage shown in the Landlord's photographs existed when she first moved in, and that the rest of the damage was not there when she moved out.

The Tenant submitted that she gave the Landlord only one forwarding address for the purpose of returning the security deposit. She stated that the address she gave on her Application for Dispute Resolution is her mother's address, which she gave so that her mom could sign for registered mail because the Tenant works during the day. The Tenant stated that the third address the Landlord referred to is her work address and was the return address she provided on an envelope she sent to the Landlord containing documents for the Hearing.

The Tenant stated that she still lives at the forwarding address she provided to the Landlord.

The Landlord gave the following reply:

The Landlord testified that he asked the Tenant to give the new occupant the key because the Tenant was so late moving out on January 31, 2017.

Analysis

Regarding the Tenant's Application:

Section 38 of the Act provides:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must repay a deposit
- (a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*],
 - (b) by giving the deposit personally to the tenant, or
 - (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

It is clear from the documentary evidence provided by both parties that they communicated with each other mainly by text message. I accept the Landlord's evidence that the security deposit, less the amount for unpaid utilities, was mailed to the Tenant's forwarding address on February 6, 2017. However, it is clear from both parties' testimony that the Tenant did not receive the cheque. Copies of the text messages indicate that Tenant advised the Landlord that she had not received the cheque on February 19 and February 23, 2017. The Landlord replied to those messages on February 27, 2017, replying that he had sent the cheque on February 6, 2017. The Tenant sent the Landlord two more texts on March 5 and 14, 2017, advising that the cheque had still not been received. The Landlord responded on March 14, 2017, and remarked that the Tenant had left the rental unit in "an unclean state". The Tenant sent the Landlord another text on March 28, 2017, advising that she had still not received the cheque. The Landlord responded on March 28, 2017, that he would go to the bank and "get a stop payment" and write another cheque.

The Landlord testified that he placed a stop payment on the cheque on April 24, 2017; however, there was no evidence that the Landlord had written and provided the Tenant with a replacement cheque for return of the security deposit.

I accept that the Tenant provided her forwarding address, in writing, to the Landlord by leaving her forwarding address in the Landlords' mail box on January 31, 2017. Service in this manner is deemed to be effective 3 days afterwards. Therefore, I find that the Landlords received the Tenant's forwarding address in writing on February 3, 2017.

I find that the Landlords did not repay the security deposit to the Tenant, contrary to the provisions of Section 38(1) of the Act. I find that the Landlords were aware that the Tenant claimed not to have received the cheque on February 27, 2017, but did not take steps to cancel the lost cheque or to provide her with the security deposit until after the Tenant made her Application for Dispute Resolution on April 19, 2017.

I do not accept the Landlords' submission that they did not know where to send the security deposit. A tenant may use a different address for service of documents on an Application for Dispute Resolution from a forwarding address given for the purposes of return of the security deposit.

I find that the Tenant is entitled to compensation pursuant to the provisions of Section 38(6)(b) of the Act.

The Tenant has applied to recover the cost of serving the Landlord; however, there is not provision in the Act for such a claim.

The Tenant has been successful in her Application and I find that she is entitled to recover the cost of the filing fee from the Landlord.

I find that the Tenant has established a monetary award, calculated as follows:

Return of the security deposit	\$750.00
Compensation under Section 38 of the Act	\$750.00
Recovery of the filing fee	\$100.00
Less outstanding utilities	<u><\$417.00></u>
TOTAL	\$1,183.00

Regarding the Landlords' Application:

The Act requires a landlord to complete a condition inspection with a tenant at the beginning and at the end of a tenancy. A landlord who does not complete a condition inspection report extinguishes his right to claim against the security deposit at the end of

a tenancy; however, that landlord still has the right to claim for damages pursuant to the provisions of Section 67 of the Act.

Section 67 of the Act provides that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In this case, the Landlords allege that the Tenant did not leave the rental unit reasonably clean and undamaged at the end of the tenancy, contrary to the provisions of Section 37 of the Act.

The onus is on the Landlords to provide sufficient evidence that the Tenant breached Section 37 of the Act and that the Landlords suffered a loss as a result of that breach.

Section 21 of the Regulation provides:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The Landlords provided copies of text messages and photographs in evidence. The Landlords are not claiming for damage to the rental unit, only for the cost of cleaning the rental unit at the end of the tenancy. The Landlords provided a copy of a text message from the new occupant, which was sent on the evening of January 31, 2017, and which states:

“Sorry to text you so late. I just got the key and the place is very dirty. Are they not suppose to clean the carpet as well? I wanted to give you a heads up.”

[Reproduced as written.]

Another text from the new occupant attaches a copy of the cleaner's bill, dated February 5, 2017, which includes the notations: “Suite not cleaned at all. Very dirty. Garbage in suite. Left over food. Walls dirty.” The new occupant writes, “Here the receipt, they charged more than \$240 because the place was so dirty they had to include extra work.”

I find that the Landlord provided sufficient evidence to support his claim that the Tenant did not clean the rental unit at the end of the tenancy, and that he suffered a loss as a

result of her breach of Section 37 of the Act. Therefore, I allow his claim for the cost of cleaning the rental unit and the carpets.

The unpaid utilities have been set off against the security deposit.

There is no provision in the Act for recovery of the cost of providing evidence and therefore the Landlords' application for the cost of photocopies is dismissed.

The Landlords have been successful in their Application and I find that they are entitled to recover the cost of the filing fee from the Tenant.

I find that the Landlords have established a monetary award, calculated as follows:

Cost of carpet cleaning	\$94.50
Cost of cleaning the rental unit	\$240.00
Recovery of the filing fee	<u>\$100.00</u>
TOTAL	\$434.50

Conclusion

The Tenant is awarded \$1,183.00. The Landlords is awarded \$434.50. I hereby set off the Landlords' award against the Tenant's award and provide the Tenant with a Monetary Order for the balance, in the amount of **\$748.50**, for service upon the Landlords. This Order may be enforced in the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 26, 2017

Residential Tenancy Branch